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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,077	09/10/2003	Anthony J. Baerlocher	0112300-1530	5899

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EXAMINER	
KIM, ANDREW	
ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
09/18/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No.	Applicant(s)	
	10/660,077	BAERLOCHER ET AL.	
	Examiner	Art Unit	
	ANDREW KIM	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 August 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 10, 11, 16-19 and 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Marks et al. (US 2003/0236116).

Regarding claim 1,10,16, 19, 21,24 Marks discloses a gaming device comprising

At least one display device;

At least one input device;

At least one processor; and

At least one memory device which stores a plurality of instructions, which when executed by the at least one processor, cause the at least one processor to operate with the at least one display device and the at least one input device to:

(a) enable a player to place a wager on a play of a base game by enabling the player to select a variable first component of said wager (paragraph 61, number of paylines) and a variable different second component of said wager (paragraph 52, item 130, wager per payline), said wager having a total value;

(b) display an outcome for the play of the base game (paragraph 57);

(c) if the player selects at least a threshold amount for the first component of the wager for the play of the base game and the displayed outcome for the play of the base game includes a designated outcome (a player must first place a threshold wager of at least one payline in order to initiate play and may trigger a bonus game win upon achieving a feature enabling criteria, paragraph 78), trigger a bonus game associated with a meter displayed in the bonus game, said meter being changeable each time the bonus game is triggered (paragraph 83), wherein:

(i) each time the bonus game is triggered, said meter is at a displayed predetermined level (paragraph 85), and

(ii) each time a change of said meter occurs during the bonus game, said change is of an amount which is determined based on the selected different second component of the wager for the play of the base game and regardless of the total wager value of the wager placed and any outcome which occurs in the play of the base game (paragraph 88, it is regardless of the total wager value because the formula is used regardless of the total value or monetary value of the wager amount); and

(d) when said meter reaches a designated level (when the percentage is based upon the wager level, paragraph 23), provide an award generation event associated with the meter to the player (the percentage meter is changed on the display).

Regarding claims 2,17 and 22, Marks discloses the bonus game spin meter is affected linearly proportionally based on the second component of the wager (paragraph 5).

Regarding claim 3, Marks discloses the base game is a slot game (Fig.1A).

Regarding claims 4, 18 and 23, Marks discloses the meter may be common to all players of linked slot machine games. The meter tracks the number of occurrences of bonus game hits obtained by the collective of multiple players such that if one player were to cash out of a slot machine, it would not affect the meter (as long as the wager level stays the same).

Regarding claim 5, Marks discloses wherein the base game is a slot game and wherein the first component is a number of paylines wagered and the second component is a wager per payline (paragraph 30).

Regarding claim 6, Marks discloses wherein the base game is a slot game and wherein the second component is a number of paylines wagered and the first component is a wager per payline (paragraph 30).

Regarding claim 11, Marks discloses the award generation event includes a number of free reel spins, a number of free games, a free reel spin with one or more wild symbols, a credit transfer, a credit multiplication, a video display, a mechanical display or any combination thereof (paragraphs 35, fig. 1A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2003/0236116) in view of Moody (US 5,823,873).

Marks discloses a player chooses the amount of a wager and the number of paylines they wish to wager on. Additionally, Marks discloses that any criteria may be used in determining when to award a bonus (paragraphs 30 and 95). In an analogous slot machine gaming device, Moody discloses a video poker game wherein the player is dealt multiple hands of cards and the player makes multiple wagers on said hands of cards such that the wagering components consist of the number of hands played and the wager per hand as claimed. The award is based on these wagering components. Therefore, all the claimed elements were known in the prior art and one skilled in the art

could have combined the elements as claimed by known methods and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2003/0236116) in view of Schneider et al. (US 6,089,976).

Regarding claim 9, *Marks does not specifically disclose the threshold amount for the first component is the maximum amount for the first component*. However, Marks discloses that the bonus game trigger may consist of any of a variety of conditions (paragraph 95). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the maximum wager amount as the bonus triggering event condition, as taught by Schneider et al. (US 6,089,976). Schneider discloses a primary game wherein the player is able to qualify for bonus game play if they wager a maximum amount of credits and obtain a winning outcome (Fig. 7). This is a well-known bonus trigger requirement. Thus, all the claimed elements were known in the prior art at the time of the invention and one skilled in the art could have combined the elements as claimed by known methods and the combination would have yielded predictable results.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2003/0236116).

Regarding claims 12 and 13, Marks substantially discloses the invention as claimed but fails to explicitly teach a controller through a data network including an internet or computer storage device. However, it was notoriously well known at the time of the invention to control and offer gaming devices over the internet.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2003/0236116) in view of Piechowiak et al. (US 6,167,523 B1).

Regarding claim 14, Marks substantially discloses the invention as claimed but fails to explicitly teach that a determination of whether the designated outcome in the base game occurs is made prior to the player's play of the base game. Instead, Marks is silent as to the time frame of the determination of the outcomes. However, in an analogous reference, Piechowiak discloses the bonus game may be enabled upon a lapse of a certain amount of time such that the controller knows to initiate the bonus game (by providing a bonus enabling outcome) prior to the player's play of the base game (col. 4, lines 57-64) to increase player appeal by creating anticipation in the player from the possibility of winning simply by playing. Therefore, it would have been obvious to one or ordinary skill in the art at the time of the instant invention to modify Marks with determination of an outcome before play of the base game to increase player appeal.

Claims 15, 20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks et al. (US 2003/0236116) in view of Giobbi et al. (US 6,155,925).

Marks does not specifically disclose a second bonus game played if the player does not select at least the threshold amount for the first component of the wager in the base game and achieves the designated outcome in the base game. However, Giobbi discloses multiple bonus games played in accordance with various wagering thresholds. Specifically, a processor **26** controls the primary game and enables a plurality of different wagers to be made on the primary game and bonus games. The processor selects a pay schedule having different game outcomes corresponding to a predetermined wager amount such as 1-5,6-10,11-15, etc. credits each having a payout percentage per credit that successively increases as a wager increases. Thus, the pay schedules each correspond to a range of credits wagered shown in Fig. 6a-6e represent a plurality of bonus games. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Marks to include multiple bonus games for varying wagering amounts, as disclosed by Giobbi, as Giobbi is an analogous gaming device invention in the same field of endeavor.

Response to Arguments

Applicant's arguments filed 8/17/09 have been fully considered but they are moot in view of the new grounds of rejection.

Regarding Piechowiak and the portion of the disclosure, the portion has been removed for the time being and is now moot.

Regarding Singer, the new grounds of rejection render the arguments moot for the time being.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KIM whose telephone number is (571)272-1691. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

9/16/2009 /A. K./
Examiner, Art Unit 3714